

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
Form 7. Mediation Questionnaire**

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form07instructions.pdf>

9th Cir. Case Number(s) 20-55770

Case Name Rodriguez v. Barr

**Counsel submitting
this form**

Zoe McKinney
ACLU Foundation of Southern California

**Represented party/
parties**

Petitioners-Appellees

Briefly describe the dispute that gave rise to this lawsuit.

Petitioners filed a class habeas petition in 2007 alleging that their prolonged confinement without individualized bond hearings, at which the government bears the burden of establishing by clear and convincing evidence that the individual poses a flight risk or danger to the community, violates the Immigration and Nationality Act and the Fifth Amendment's Due Process Clause. The district court certified a class and subclasses. It issued a preliminary injunction in 2012 and a permanent injunction in 2013.

The dispute is now in the U.S. District Court for the Central District of California, where the parties are engaged in discovery and setting a briefing schedule to resolve the outstanding jurisdictional, class certification, and constitutional issues. This appeal is from the district court's denial of the government's motion to vacate the injunction and decertify the class. Mediation is appropriate because the parties plan to move quickly in district court, and anticipate that the court will decide whether a permanent injunction is appropriate relatively soon. A subsequent appeal is likely. Mediation of the timeline and issues of the pending appeal, in light of the fact that the district court may reach a final judgment before or around the same time the Ninth Circuit is likely to rule, will increase efficiency and protect judicial resources by preventing this Court from considering redundant appeals of similar issues.

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Briefly describe the result below and the main issues on appeal.

The district court issued, and this Court affirmed, a preliminary injunction in 2012 requiring that the government identify and provide bond hearings for individuals in two of the subclasses. The district court then issued a permanent injunction requiring that all class members be afforded individualized bond hearings after more than six months of detention, and the Ninth Circuit largely affirmed on statutory grounds. In February 2018, the Supreme Court reversed and remanded as to the statutory holdings, but declined to either vacate the injunction or consider Petitioners' constitutional claims. *Jennings v. Rodriguez*, 138 S.Ct. 830, 852 (2018). On remand, the Ninth Circuit also declined to vacate the injunction and remanded to the district court. The government moved to decertify the class and vacate the preliminary and permanent injunctions. The district court denied the government's motions, holding that it was obligated by the Ninth Circuit's remand order to keep the permanent injunction intact and that dissolving the class at this juncture would inhibit the resolution of outstanding issues. The government appealed.

The issues on appeal are whether the district court erred in (1) denying the government's motion to vacate the injunction and (2) in declining to decertify the class. Mediation is appropriate to consider the timeline for appeal in light of continuing district court proceedings below.

Describe any proceedings remaining below or any related proceedings in other tribunals.

This is an interlocutory appeal from an order refusing to dissolve an injunction. Petitioners intend to move to dismiss the portion challenging the order on the decertification motion for lack of appellate jurisdiction, and will also request that the Court stay the appeal until that motion is decided. At the same time, the parties are working diligently to complete limited discovery and finalize a briefing schedule for resolution of the merits of this case in district court.

Signature

Date

(use "s/[typed name]" to sign electronically-filed documents)